



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

DAS:CMM
F. #2013R00948

*271 Cadman Plaza East
Brooklyn, New York 11201*

February 10, 2015

By ECF and Fed Ex Delivery

Richard Haley, Esq.
Haley, Weinblatt & Calcagni, LLP
1601 Veterans Memorial Highway, Suite 425
Islandia, New York 11749

Re: United States v. Philip Kenner
Criminal Docket No. 13-CR-607 (JFB)

Dear Mr. Haley:

As you are aware, I am firewall counsel in the above-captioned case. This letter serves to memorialize our conversations of February 6, 9 and 10, 2015, and to formally respond to your correspondence, dated December 2, 2014 and December 4, 2014.

As I indicated to you during our telephone conversations of February 6 and 9, I never received your December 2 or December 4 correspondence. While these letters were filed electronically on Pacer, I do not receive Pacer ECF notifications for this case, as I am not assigned to the prosecution of this case. Further, you did not mail either letter to my attention and did not contact me by phone or email to discuss these matters.¹ Consequently, not until Friday, February 6, 2015, when I reached out to you to ascertain whether or not the defendant had any privilege objections in advance of my production of materials to the investigative team, was I made aware of your correspondence.

With respect to your December 2, 2014 letter, it is unclear why the passwords for the CDs do not work, as both my paralegal and I were able to access the information. Nevertheless, enclosed please find three additional CDs that are not password protected. These CDs are, again, identified as follows: (1) a CD, Bates stamped PRIV-PK000002,

¹ I also note that the address indicated on these letters is incorrect. As indicated on all of my correspondence, I work at the Brooklyn Office of the U.S. Attorney's Office for the Eastern District of New York located at 271 Cadman Plaza East, Brooklyn, New York 11201 – not 610 Federal Plaza in Central Islip.

containing documents that firewall counsel has identified as “Privileged;” (2) a CD, Bates stamped PRIV-PK000003, containing documents that are “Unclear,” that is, it is unclear from the face of the document whether a privilege exists; and (3) a CD, Bates stamped PRIV-PK000004, containing a clean (unredacted) version of documents to be redacted.²

With respect to your December 4, 2014 letter, you indicated that you were unable to open the flash drive Bates stamped PRIV-PK000001, because my paralegal may have inadvertently provided you with the wrong password. This is incorrect. As discussed yesterday, by email to you dated December 2, 2014, my paralegal (Megan Hynes) provided you with the correct password for the flash drive. Further, as discussed yesterday, you have confirmed that, using the correct password, you are able to access the information on the flash drive. Accordingly, you have had both the flash drive and correct password since December 2, 2014.

Further, on November 3, 2014, in addition to the electronic material discussed above, I also reviewed and produced to you by Fed Ex one redweld of paper documents. These documents were categorized as “Not Privileged,” “Privileged,” and “To Be Redacted,” and produced to you as follows: (1) documents identified as “Not Privileged,” Bates stamped PRIV-PK000006-000078; (2) documents identified as “Privileged,” Bates stamped PRIV-PK000079-000168; and (3) one document in both a clean and redacted form, Bates stamped PRIV-PK000169 and PRIV-PK000170, respectively.

With respect to the redweld of documents produced on November 3, you have requested until Thursday, February 12, 2015 to complete your review. Please be advised that I intend to disclose to the investigative team on Friday, February 13, 2015, materials described above, Bates stamped PRIV-PK000006-000078 and PRIV-PK000170 unless, before that date, the defendant asserts a valid basis to find the materials privileged.

With respect to the electronic documents discussed above, I intend to disclose to the investigative team on Tuesday, February 17, 2015, materials described above, Bates stamped PRIV-PK000001, PRIV-PK000003, and PRIV-PK000005 unless, before that date, the defendant asserts a valid basis to find those materials privileged.

² On November 3, 2014, the undersigned provided you with a CD, Bates stamped PRIV-PK000005, containing firewall counsel’s proposed redactions to the documents on CD PRIV-PK000004. As indicated in your December 2, 2014 letter, you and your client have been able to access the information on this CD since it was produced on November 3, 2014.

